IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO. 242 OF 2006

IN

WRIT PETITION NO. 5503 OF 2006

WITH

LETTERS PATENT APPEAL NO. 256 OF 2006

IN

WRIT PETITION NO. 5509 OF 2006

LETTERS PATENT APPEAL NO. 242 OF 2006

IN

WRIT PETITION NO. 5503 OF 2006

Feminine And Infant
Healthcare & Ors. .. Appellants.

vs.

The Vasai Janata Sahakari
Bank Ltd., & Ors. .. Respondents.

LETTERS PATENT APPEAL NO. 256 OF 2006

IN

WRIT PETITION NO. 5509 OF 2006

Feminine And Infant
Healthcare & Ors. .. Appellants.

vs.

The Vasai Janata Sahakari

Bank Ltd., & Ors. .. Respondents.

Mr. S.D. Patil i/by Shivraj R. Patil for Appellants.

Mr. S.A. Ghaisas for Respondent Nos. 1 & 4.

Ms. P.S. Cardoso

..

Coram: J.N. PATEL &,

A.A. SAYED, JJ.

Date: 19TH JUNE, 2007.

P.C.

. Heard.

2. These Letters Patent Appeals have been filed by the debtor challenging the authority of the Divisional Registrar, Co-operative Societies, Navi Mumbai in confirming the recovery certificate dated 31.8.2005 issued by the Deputy Registrar, Co-operative Societies, Vasai and the letter dated 28.7.2006 issued by the Special Recovery Officer and Sales Officer, Co-op. Department, Government of Maharashtra under which the amount due and payable by the appellants to the respondent co-operative bank is to be recovered. The order was challenged by preferring a writ petitions. The learned Single Judge has dismissed the petitions against which these letters patent appeals have been filed.

3. The main contentions of the appellants were that the amount which has been certified to be recovered by the authorities under the Co-operative Societies Act is beyond a sum of Rs. 10 lacs and, therefore, there is no jurisdiction to initiate recovery in the matter as the bank will have to approach the DRT which is the forum constituted under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 in order to recover the said amount. This contention is without prejudice to the rights of the appellants as to the amount quantified in the recovery certificate. The appeal was kept pending as the matter was pending before the Supreme Court.

4. In the case of Greater Bombay Co-op. Bank Ltd., vs. United Yarn Tex. Pvt. Ltd., & Ors., reported in 2007 (3) Mh.L.J. 434, the Supreme Court has held that in so far as co-operative banks are concerned they can take recourse to the procedure provided under the 1993 Act and Rules framed thereunder which govern recovery of money due to a co-operative bank as it does not fall within the definition of "banking company" as defined in section 5 (c) of the Banking Regulation Act, 1949 and a tribunal constituted under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 would not have any jurisdiction in the matter and it is the Registrar under the Co-operative Societies Act who will have jurisdiction

to initiate proceedings. Therefore, we do not find that the view taken by the learned Single Judge suffers from any error or illegality and the issue of jurisdiction being covered by the decision of the Supreme Court in the case of Greater Bombay Co-op. Bank Ltd., (supra), nothing survives in the letters patent appeals.

5. The learned counsel appearing for the appellants submitted that the appellants have also preferred a civil suit against the respondent bank claiming certain amount by way of damages and that there are certain observations made by the learned Single Judge of this Court while disposing of the writ petitions which may prejudice the claim of the appellants in the civil suit and, therefore, to that extent the Court may clarify the fact situation so that the appellants can prosecute their suit independently of the recovery proceedings.

6. In our view, in so far as the appellants suit for damages against the bank is concerned, though it may be arising out of the transaction of which debt is being recovered through the process of the office of the Registrar appointed under the Co-operative Societies Act, but, if, at all, the appellants have any case to claim damages against the respondent co-operative bank, the civil court would determine the same on merits and independent of the proceedings

initiated for recovery of debt due and payable by the appellants. Therefore, any observation made in the recovery proceedings cannot be construed as an impediment in the way of the appellants in claiming damages unless one of the issues in the suit is finally adjudicated in the recovery proceedings. With these observations the letters patent appeals stand dismissed. No order as to costs.

7. In view of the dismissal of the letters patent appeals, civil applications do not survive and the same also stand dismissed.

(J.N. Patel, J.)

(A.A. Sayed, J.)